



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/01/02	Bill No:	SB 2082
Tax:	Cigarette	Author:	Bowen
Board Position:	Support	Related Bills:	SB 1766 (Ortiz)

BILL SUMMARY

This bill would require any person who advertises on the Internet to sell cigarettes in California and is subject to the provisions of the Jenkins Act to conspicuously disclose that a purchaser who buys cigarettes that are shipped into California is responsible for paying the state excise tax and the state use tax and to show in the advertisement the amount of these taxes that would be due. This bill would also require the person selling or transferring the cigarettes to provide to the Board of Equalization a copy of the invoice for each shipment made into California.

ANALYSIS

Current Law

Under current law, Section 30101 of the Cigarette and Tobacco Products Tax Law imposes an excise tax of 6 mills (or 12 cents per package of 20) on each cigarette distributed. In addition, Section 30123 and 30131.2 impose a surtax of 12 ½ mills (25 cents per package of 20) and 25 mills (50 cents per package of 20), respectively, on each cigarette distributed. The current total tax on cigarettes is 43 ½ mills per cigarette (87 cents per package of 20). This excise tax is imposed upon each cigarette distribution, which is basically defined as the first sale of untaxed cigarettes in this state.

Current law imposes a sales or use tax on the sale or purchase of tangible personal property in this state (including cigarettes). When a person buys cigarettes from a point outside this state for the use or consumption in this state, the use tax is due. If the out-of-state seller has nexus within the state, the seller is required to collect the use tax from the purchaser at the time of sale. If the seller does not collect the use tax, or if the seller does not have nexus in this state, the purchaser is required to pay the use tax directly to the Board of Equalization.

Chapter 10A of Title 15 of the United States Code (also known as the Jenkins Act) requires any person that sells or transfers cigarettes for profit in interstate commerce and ships the cigarettes into a state that imposes a tax on cigarettes to file by the 10th of each calendar month a copy of the invoice for each and every shipment of cigarettes made during the previous calendar month in that state. This information is required to show the name and address of the person to whom the shipment was made, the brand, and the quantity of shipment. Any person who violates these provisions shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000, or imprisoned not more than 6 months, or both.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Proposed Law

This bill would add Section 17508.5 to the Business and Professions Code to provide that any person who advertises on the Internet to sell cigarettes in California and who is subject to the provisions of the Jenkins Act to conspicuously disclose in the advertisement, all of the following:

- Any purchaser who buys cigarettes that are shipped into California is responsible for paying on each purchase the state excise tax and the state use tax.
- Next to the advertised price, the amount of the California excise tax and the California use tax that would be due based on the quantity ordered. The amount of each tax must be separately stated.
- A statement disclosing that, pursuant to federal law, the person selling or transferring the cigarettes is required to file with the Board of Equalization a copy of the invoice for each and every shipment of cigarettes made into California.

Background

Because of the state excise tax imposed on cigarettes and the sales tax due on the sale of cigarettes, many consumers have turned to the internet as a way of obtaining cigarettes from out-of-state sellers who do not charge the California taxes. To help track down the purchasers of cigarettes from out-of-state sellers, the Board utilizes information required to be provided by the Jenkins Act (requires the sellers to provide the name and address of the purchasers to the Board) to bill consumers for the taxes due.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author. The purpose of this bill is to help the state enforce the excise tax and use tax provisions.
2. **Summary of May 1 amendments.** Amendments to this bill added language providing that nothing in this section relieves a retailer of its obligation to collect the taxes when the retailer is considered engaged in business in this state, which addresses a concern raised in the prior Board analysis.
3. **This bill promotes the provisions of the Jenkins Act.** The Jenkins Act requires any person that sells or transfers cigarettes for profit in interstate commerce and ships the cigarettes into a state that imposes a tax on cigarettes to file by the 10th of each calendar month a copy of the invoice for each and every shipment of cigarettes made during the previous calendar month in that state. Many consumers who shop on the internet may not be aware of these provisions and think they are successfully avoiding the tax by purchasing cigarettes from out-of-state sellers over the internet. Requiring the information about the Jenkins Act to be posted on the each seller's website would inform the purchaser of the provisions so the purchaser may be less inclined to purchase over the internet for the sole reason of avoiding the tax.
4. **Penalty provisions recommended.** This bill requires any person who advertises on the internet to sell cigarettes to post certain information on their website

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advertising cigarettes for sale. However, this bill does not impose a penalty on a seller who fails to comply with the proposed requirements in this bill.

5. **Enforcement.** This bill would make several requirements of any person who advertises on the Internet to sell cigarettes. However, some of these sellers are located outside California and have no business presence in this state. Without a presence in this state, the state would have a difficult time enforcing the provisions of this bill.
6. **Provisions in this bill may be confusing for consumers in other states.** Requiring the seller to post information about California taxes due on a website advertising cigarettes for sale to consumers all over the world could be confusing for consumers in other states. For example, a consumer in the state of Texas may wonder why California taxes would be due on a purchase of cigarettes from a company in Virginia.
7. **Suggested technical amendment.** Recent amendments to this bill added language providing that nothing in the proposed section relieves a retailer subject to Section 6203 or 30108 of the Revenue and Taxation Code of its obligation to collect tax pursuant to those sections. Section 6203 pertains to the liability and collection of sales and use tax, and the term “retailer” is correct. However, Section 30108 deals with the excise tax imposed on cigarettes, and the term “retailer” is not applicable. The proper term in dealing with the excise tax on cigarettes is “distributor.” It is recommended that subdivision (c) be amended to read as follows:

“Nothing in this section relieves a retailer subject to Section 6203 or a distributor subject to Section 30108 of the Revenue and Taxation Code of its obligation to collect tax pursuant to those sections.”
8. **Related legislation.** Senate Bill 1766 (Ortiz) would require that every retail sale of a tobacco product in California be a vendor assisted face-to-face sale, unless the seller either remits to the Board of Equalization all applicable taxes due on the sale or includes a prominent label on the package indicating that the package contains tobacco products, the package is not to be delivered to a minor, and a notice that the purchaser is responsible for any applicable California taxes on the tobacco products.

COST ESTIMATE

Any costs associated with the provisions of this bill are expected to be absorbable.

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REVENUE ESTIMATE

The provisions of this bill may have a positive impact on the state excise tax collected on sales of cigarettes and also on use tax collected on cigarettes purchased from out-of-state retailers. However, the Board has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

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